SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

NO.

FRANK SPALITTA, as Guardian of the Minors,
KAREN ELIZABETH and
GINA THERESA SPALITTA,
Plaintiff-Appellant,
Respondent herein

versus

NATIONAL AMERICAN BANK OF
NEW ORLEANS, ET AL
Defendants-Appellees,
Petitioner herein

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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NATIONAL AMERICAN BANK OF
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The National American Bank of New Orleans, Louis J. Roussel, Clem H. Sehrt, Harry Batt, William A. LaRose, Jennings Courville and Ralph Dubos respectfully pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeal for the Fifth Circuit entered in the above matter on May 26, 1971.

OPINION BELOW AND JURISDICTION

The opinion of the Court of Appeals (Appendix pp. 53-60), was entered on May 26, 1971.

Jurisdiction of this Court is invoked under Supreme Court Rule 19 (1) (b), because there is a conflict between the decision of the Court below and decisions rendered by the United States Courts of Appeal for the Seventh and Ninth Circuits.

STATEMENT

Plaintiff, Frank J. Spalitta, filed this suit as guardian of his two minor daughters who owned 25 shares (of a total of 300,000 shares) of the National American Bank of New Orleans, Louisiana. The defendants are the Bank as a 'nominal party', Louis J. Roussel, Clem Sehrt and Harry Batt as officers and or directors of the Bank and William LaRose, Jennings Courville and Ralph Dubos as officers (but not directors).

"The suit was brought for the benefit of the Bank on behalf of all stockholders similarly situated" to plaintiff. The gist of the complaint is that the Bank has suffered substantial losses because of certain fraudulent and illegal acts and transactions of the appellee officers and directors which constituted violations of the National Bank Act and their fiduciary duty.[1] The trial court dismissed the action on motion of the Defendant, finding that some of the claims were barred by the contemporary ownership rule which requires that the acts complained of occur while the complaint is a stockholder; another claim was held premature because the property involved was in litigation in another Division of the Court; and a final claim was held moot since the alleged gift of properties to three vice presidents of the Bank in connection with banking transactions had been reconveyed to the grantor's

[1] Jurisdiction of the Federal Courts is established by alleged violation of the National Bank Act, 12 USC 84, and 12 USC 93.

successor, the Trustee in Bankruptcy, by order of the United States District Court having jurisdiction over the bankruptcy proceedings.

Your petitioners (Defendants) filed a motion to dismiss, which pursuant to FRCP 56 was converted into a motion for summary judgment, which was sustained. Plaintiffs appealed, the Fifth Circuit reversed the judgment of dismissal and remanded the case for trial. Hence, this petition for writs of certiorari and review.

REASONS FOR WRIT

The United States Court of Appeal for the Fifth Circuit held that a suit by a minority stockholder on behalf of himself and all other stockholders to recover damages solely for the benefit of the corporation was a "class action" and not "a stockholders' derivative suit" and, therefore, the contemporaneous ownership rule (FRCP 23.1) was not applicable. This holding is in conflict with these decisions:

Fleishacker v. Blum, 109 F.2d 543 (9th Cir. 1940) (see FN p. 547), which held that a suit by a stockholder to recover an illegal bonus paid to a bank president (one of the complaints here) was a stockholder's derivative suit and that FRCP 23 was applicable; and

McDaniel v. Painter, 418 F.2d 545 (10th Cir. 1969) and *Robison v. Caster*, 356 F.2d 924 (7th Cir. 1966) both holding that FRCP 23.1 applied in a case such as this.

The Defendants, Appellees below, petition for a writ of certiorari because of this conflict among the circuits (Supreme Court Rule 19(1)(b)).

ARGUMENT

A "class action" is one where one stockholder sues to recover *primary* benefits for himself and for those comprising his class. A "stockholder's derivative suit" is one where the stockholder, for himself and for his fellow shareholders, sues to recover benefits not for himself but for the corporation, that is, *secondary* benefits to the stockholder and his class. Thus, a derivative action is a special type of class action. FRCP 23.1 recognizes this and makes special requirements.[2]

It was enacted to prevent the misuse of stock ownership by those who acquire their shares after the event, and thus, promote "strike" litigation.[3]

This suit claims that certain officers and directors of the National American Bank of New Orleans violated their fiduciary obligations to the bank by making overline loans[4] and accepting illegal benefits[5] and by permitting an overconcentration of loans to one group of borrowers.[6]

They seek to recover for the benefit of the Bank the losses occasioned because of the excessive lending and the accumulation of credit and the value of the illegal bonuses allegedly paid to certain officers and directors. Plaintiff

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[2] This distinction is recognized by the Supreme Court in *Ross v. Bernhard*, et al, 396 US 531 (1970) at p. 538 *et seq.*, although the holding was different. There is a very fine discussion of the distinction between a "pure" class action and a "stockholder derivative suit" by District Judge Garsch in *Johnson v. American General Insurance Company*, 296 F.Supp. 802 (Dist. of Col. 1969).

[3] See also *Pioche Mines Consolidated, Inc. v. Dolman*, 333 F.2d 257 (9th Cir. 1964).

[4] 12 USC 83.

[5] 12 USC 93.

[6] Claims outside the National Bank Act, but which allege other violations of fiduciary capacity by directors and officers of national banks have been generally termed "common law actions" and are not in themselves basis for Federal jurisdiction with the requirements of diversity and jurisdictional amount.

does not claim any direct damage for himself or his fellow shareholders. The complaint, itself, so states and the court below so held.

Although the opinion of the Fifth Circuit is predicated on the theory that this is a "class action" and that *Zahn*[7] and *Surovitch*[8] apply, it originally stated that this suit "was a derivative and class action". Its language supports our contention that this is a derivative action although the conclusion is to the contrary. For example, at one point in its opinion, the court below said:

> "The suit was brought *for the benefit of the bank* as a class action on behalf of the stockholders. . ."

and at another place:

> "The recovery sought is not the property, but judgment against the appellees *for the damages, if any, the bank has suffered by reason* of the illegal transaction. . ."

finally, the court said:

> "The appellant seeks damages *for the Bank* against the three vice presidents. . .". (All emphasis ours).

This language by the court leads only to the conclusion that the plaintiffs seek to recover benefits *for the bank* and *not for themselves:* a stockholders' derivative action.

This is the only conclusion which can be drawn from the

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[7] *Zahn v. Transamerica Corp.*, 162 F.2d 36 (3rd Cir. 1947).
[8] *Surovitz v. Hilton Hotels Corp.*, 383 U.S. 363 (1966).

pleadings themselves. They allege that the bank is only a nominal party, a requirement of a stockholders' derivative suit and throughout the pleadings commencing in Article IV and continuing through Articles VI, VII and XXIII that the plaintiff seeks to recover the losses which he alleges were suffered by the bank by virtue of the alleged illegal action of its officers and directors. Only once does the plaintiff refer to a class action; that is Article VIII where plaintiff says that this is a class action only to the extent that the shareholders, themselves are damaged. This is not an allegation of fact but a conclusion of law, especially since a search of the complaint will not disclose any allegation, claim or prayer for the private loss of the shareholders.

It is for these reasons that we have concluded and urge that the decision of the Court below is in error and that this is not a class action, but a stockholders' derivative suit to which the principles of FRCP 23.1, *Mc Daniel* and *Robison* should apply. See also, *Butler v. Pedigrue*, 409 F.2d 1205 (7th Cir. 1969).

This would be the effect of the application of FRCP 23.1, in this case:

(1) The claim for damages for overline loans would be eliminated. The overline clearly occurred on a specific date long prior to plaintiff's acquisition and by its nature cannot be a continuing or conspirational act. This court has held the cause of action for excessive loans occurs when the loan is made.[9]

(2) Article XXII of the petition claims specific cases of "betterments" received by certain officers and

[9] See Louisiana National Bank v. Johnson, 251 US 68 (1919).

directors as inducement to make loans. These are particularized in Article XXII of the Complaint. Each of these occurred at a specific time and on a specific date prior to acquisition.

Accordingly, the judgment of the District Court dismissing the suit as to these claims should be maintained, or the matter should be remanded with instructions to the District Court that if it finds this to be a derivative suit, that FRCP 23.1 is applicable and should be enforced where relevant.

(3) The remaining issues are these:

(a) Any liability due to the loans made to Five Flags Building Corporation, with respect to the 225 Baronne Building (and we say these were not illegal illegal loans)

(b) For any "overconcentration of loans" which has been defined by the courts as a "common law claim" as distinguished from those which arise under the National Bank Act, and

(c) The specific claims against officers Courville, DuBos and LaRose for the Tanglewood Estates Transactions as alleged in Article XXII (10) of the Complaint.

The Fifth Circuit was impressed by the seriousness of the allegations and applying *Poller v. Columbia Broadcasting System, Inc.*, 368 US 464 (1962) ..... that its holding in this matter was basically in the "public interest". We do not want this Court mislead in the same way. Had the Fifth Circuit not "subsumed" De-

fendant's "capacity to sue" it would have examined the record and determined first that the Court, rather than subsuming capacity, in reality dismissed the complaint on the other grounds merely skirting this issue. On the other hand, the record before the court showed that this Plaintiff by the uncontroverted facts in the record:

(1) was an officer and director,

(2) borrower and guarantor, and otherwise

(3) fully involved,

as a participant with the corporations and other entities which were involved with the Bank in all of the alleged illegal activity.[10]

District Judge, Honorable Frederick J. R. Heebe, held that plaintiff was "top advisor" to the borrowers in their real estate transactions at one phase of the case and in yet another, Judge Heebe said Plaintiff was as culpable as the persons *he* corrupted as to some of these very items he now complains of.[11]

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[10] This is a part of the record shown by the affidavits and other documents filed by defendants and summarized in the uncontroverted "Statement of Undisputed Facts", Appendix p. 68.

[11] In the matter of Southern Land Title Co., in reorganization, 301 F. Supp. 379 at p. 384, Judge Frederick J. R. Heebe stated: "Recile's top assistant in the acquisition and operation of real estate is Frank Spalitta. . ." and in the same proceedings, relating to the 225 Baronne Building (and same in this case) Judge Heebe said:

> "Furthermore, if the said Jennings L. Courville did accept cash or other items of value from Southern Land Title Corporation, or its related corporations, without performing legitimate services in consideration therefore, then he became an agent for Southern Land Title Corporation, or for whatever related corporation which gave him such items of value; any wrongdoing on his part would be attributable to the paying corporation and not to the Bank. The testimony clearly reflects that Frank J. Spalitta never did tell any officer of the Bank of the monies or other gratuities which the debtor corporations paid to Courville. The Court cannot accept the reasons which Spalitta gave for his silence" (see Deposition of Frank Spalitta taken in this proceeding on April 20, 21, 1970, pp. 63-71).
>
> In the matter of Southern Land Title Corp., in Reorganization, in re Five Flags Bldg., Inc. 316 F. Supp. 1059 at p. 1070 (1970).

This is why we urge that 23.1 is so important in this case — Defendant is litigating his own wrongs, most of which occurred long before he bought the stock for his children.

CONCLUSION

It is, therefore, respectfully submitted that the decision of the Fifth Circuit below is in conflict with the decisions of the 7th, 9th and 10th Circuits and that this matter should be remanded to the District Court with instructions to try those matters which remain, after the application of the prior ownership rule as enounced in FRCP 23.1 (A) to those allegation relating to complaints which occurred prior to Plaintiff's stock acquisition.

Respectfully submitted,

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Attorneys for the National American
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CERTIFICATE

I hereby certify that copies of this Petition for Writ of Certiorari have this day been forwarded to all counsel of record in these proceedings via United States Mail, postage prepaid, properly addressed.

MOISE S. STEEG, JR.

APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. .....

FRANK SPALITTA, as GUARDIAN OF THE MINORS, KAREN ELIZABETH AND GINA THERESA SPALITTA,

Plaintiff-Appellant,
Respondent herein

versus

NATIONAL AMERICAN BANK OF NEW ORLEANS, ET AL.,

Defendants-Appellees,
Petitioner, herein

Appendix to Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

Filed Aug. 5, 1968

CIVIL ACTION NO. 68-1479

SECTION A

TRIAL BY JURY

FRANK SPALITTA, AS GUARDIAN OF THE MINORS, KAREN ELIZABETH AND GINA THERESA SPALITTA,

Plaintiff

versus

NATIONAL AMERICAN BANK OF NEW ORLEANS, LOUIS J. ROUSSEL, CLEM H. SEHRT, WILLIAM H. LaROSE, JENNINGS L. COURVILLE, RALPH L. DUBOS, LOUIS J. ROUSSEL, III, HARRY J. BATT, SR.

Defendants

COMPLAINT IN STOCKHOLDERS' DERIVATIVE CLASS ACTION

The complaint of plaintiff, Frank Spalitta, alleges as follows:

ARTICLE I.

Plaintiff is of the full age of majority, is a resident and citizen of the City of New Orleans, State of Louisiana and is guardian of his two minor children, namely Karen Elizabeth Spalitta and Gina Theresa Spalitta, owners of 25 shares of common capital stock of the National American Bank of New Orleans under and pursuant to the Louisiana Gift to Minors Act, and as Custodian thereof exercises all rights, powers and duties with respect thereto, pursuant to La. R.S. 9:735-742.

ARTICLE II.

The defendants in this proceedings are:

a. *National American Bank of New Orleans*, a National Bank Association with its principal office and

banking house located in the City of New Orleans, twenty-five (25) of whose shares of common capital stock are owned by plaintiff, as aforesaid, and on whose behalf this proceeding is brought, as a stockholder's derivative action, as aforesaid.

b. *Louis J. Roussel*, a person of the full age of majority, resident in the City of New Orleans and a citizen of the State of Louisiana, who owns individually, and/or through corporations and individuals controlled or influenced by him, more than 51% of the shares of the common capital stock of National American Bank, who is a director and member of the Executive and Loan Committees of said Bank, and who directs and/or principally influences the policy and affairs of said bank.

c. *Clem H. Sehrt*, is a person of the full age of majority, resident in the City of New Orleans and a citizen of the State of Louisiana, who is a stockholder of National American Bank and who was at all material times President, and more recently Vice-Chairman of the Board, and Attorney for said Bank, as well as personal attorney and confidant of Louis J. Roussel.

d. *William H. LaRose*, a person of the full age of majority, resident in the City of New Orleans and a citizen of the State of Louisiana, who is a stockholder of National American Bank, and at all material times was and is now Sr. Exec. Vice President thereof, was associate and confidant of Louis J. Roussel.

e. *Jennings L. Courville*, a person of the full age of majority, resident in the Parish of Jefferson and a citizen of the State of Louisiana, who is a stockholder of National American Bank, and at all material times was, and is

now, Vice President thereof, and an associate and confidant of Louis J. Roussel.

f. *Ralph L. Dubos*, a person of the full age of majority, resident in the Parish of Jefferson and a citizen of the State of Louisiana, who is a stockholder of National American Bank, and at all material times was, and is now, Vice President thereof, and an associate and confidant of Louis J. Roussel.

g. *Louis J. Roussel, III*, is a person of the full age of majority, resident in the City of New Orleans and a citizen of the State of Louisiana, who is a stockholder of National American Bank and a Director thereof, and is the son of Louis J. Roussel; named above.

h. *Harry J. Batt, Sr.*; is a person of the full age of majority, resident in the City of New Orleans and a citizen of the State of Louisiana, who is and was at all material times a stockholder and Director of National American Bank, and an associate and confidant of Louis J. Roussel.

ARTICLE III.

Plaintiff shows that the above defendants constitute, and were at all material times, and are now and continue to be the principal executive officers and directors of National American Bank, who under the agesis of defendant Louis J. Roussel control, direct, and execute its business, affairs and policies.

ARTICLE IV.

As Officers and Directors of the National American Bank of New Orleans, at all times hereinafter mentioned,

Louis J. Roussel and the other above-named defendants owed said bank, and all of its shareholders, the utmost fidelity and occupied a fiduciary position and relationship; and, as such, they were, and are, bound to restore to said bank whatever they may have received for their own personal benefit, profit and aggrandizement, by breaching their said trust and fiduciary relationship, as well as to respond to said banks on their statutory liability.

ARTICLE V.

Jurisdiction of this Court is alleged by plaintiff upon the following statutory provisions:

a. 12 USCA 94, making national banking associations subject to suit in any District Court of the United States.

b. 12 USCA 93 and 503, imposing liability on every officer and director of a national bank who knowingly participated in or assented to a violation of any of the provisions of the National Banking Act, for all damages which the association, its shareholders, or any other person, shall have sustained in consequence of such violation, and directing the forfeiture of the rights, privileges and franchises of national banking associations whose directors knowingly permit such violations, under certain circumstances.

c. 18 USCA 220, making it illegal and a criminal offense for an officer, director, employee, agent, or attorney, of any bank whose deposits are insured by the Federal Deposit Insurance Corporation to stipulate for or receive or consent or agree to receive any fee, commission, or thing of value, from any person, firm or corporation, for procuring or endeavoring to procure for such

person, firm or corporation, or for any other person, firm or corporation, from any such bank, any loan or extension or renewal of loan or substitution of security by any such bank.

d. 12 USCA 84, limiting the amount of obligations that may be owed by any person to a national banking association ("Overline").

e. 12 USCA 77, providing for the removal of directors and officers of national banks by the Board of Governors of the Federal Reserve System upon certification of the facts by the Comptroller of the Currency of the United States Department of the Treasury of continuous violations of law and continued unsafe or unsound practices in conducting the business of such bank, after having been warned by the Comptroller of the Currency to discontinue such violations of law or such unsafe or unsound practices.

ARTICLE VI.

This is a stockholders' derivative action brought for the purpose of protecting and preserving the franchise and assets of National American Bank of New Orleans, for the benefit of its depositors and stockholders situated similarly to plaintiff, against what plaintiff is informed and believes is the continuous mismanagement, illegal activities, and corruption, of its principal dominating stockholder, Louis J. Roussel, who is likewise a director thereof and the de facto controlling influence of its business and affairs and, who, *with* Clem H. Sehrt, former President and now Vice Chairman of the Board of Directors of National American Bank, and other executive officers and directors of said National American Bank, particularly William F. LaRose, Senior Executive Vice

President, Jennings L. Courville, Vice President, and Ralph L. Dubos, Vice President, and his son, Louis J. Roussel, III, acting in concert and in conspiracy with each other, have so mismanaged and corrupted the affairs of National American Bank of New Orleans for their own private benefit, gain and pecuniary aggrandizement as to in effect convert its National Banking Charter and franchise from a banking institution designed to serve the legitimate financial needs of New Orleans and Louisiana to a personal license to extort for their own personal enrichment, as a result whereof plaintiff fears that its charter rights, privileges and franchises are subject to forfeiture pursuant to 12 USCA 93 unless the relief herein prayed for is granted. With further reference to the foregoing, plaintiff alleges that:

a. On July 25, 1968, Frank Spalitta, plaintiff, on behalf of Karen Elizabeth Spalitta and Gina Theresa Spalitta, sent a certifted mail letter, with return receipt requested, to the chairman of the board, vice-chairman of the board, president and members of the board of directors of the National American Bank of New Orleans, a copy of which, as Exhibit "1", is attached and made a part hereof.

b. In response to the said letter (Exhibit "1"), Frank Spalitta, plaintiff, received a personal letter from Clem H. Sehrt, dated July 26, 1968, a copy of which as Exhibit "2" is attached and made a part hereof; and, thereafter, he received a letter from the attorney for the National American Bank of New Orleans, also dated July 26, 1968, a copy of which as Exhibit "3" is attached and made a part hereof.

c. No further response has been received and plain-

tiff avers, therefore, that the National American Bank of New Orleans, as well as all of its officers and directors, have refused to take any action whatever on account of any of the transactions hereinabove enumerated.

d. Therefore, plaintiff is left without any recourse whatever, except to bring *this derivative action*; that any further effort to have the National American Bank of New Orleans institute this suit, or any suit, against Louis J. Roussel and those who were nominated by him to receive the sums, property or other emoluments, would be absolutely futile; that plaintiff has no adequate remedy at law; and, in connection with this action, plaintiff further avers:

ARTICLE VII.

Plaintiff further seeks, through *this derivative action*, to protect National American Bank against losses incurred by reason of illegal loans of millions of dollars knowingly made by the said Louis J. Roussel, acting in concert with the other named defendants, and perhaps others unknown to your plaintiff, as will be shown more fully hereinbelow, by imposing liability for such losses on the said Louis J. Roussel and his co-conspirators and those directors of said bank approving and or participating in such illegal loans to the extent of their statutory liability, such specifically as Louis J. Roussel, III, and Harry J. Batt, Sr.

ARTICLE VIII.

To the extent that this action seeks protection of stockholder rights, it is brought by plaintiff as a class action pursuant to Rules 23 and 23.1 Federal Rules of Civil Procedure, the class of stockholders of National American

Bank being so numerous that a joinder of all members is impractible, there being questions of law and fact common to the class, the claims of the representative parties are typical of the claims of the class and plaintiff will fairly and adequately protect the interest of all innocent stockholders, exclusive, of course, of the stockholder interests of Louis J. Roussel and the stockholders collaborating with him in the mainatenance of his control over, and mismanagement of the affairs of National American Bank.

ARTICLE IX.

Additionally this suit is for the purpose of recouping and recovering from the defendant officers and directors the advantages and gains they have derived by reason of the abuses of their positions as officers, directors and fidaciaries of National Amercian Bank, and the use of the funds of National American Bank and its depositors, for their own personal enrichment by garnering unto themselves, in violation of the duties of their office and their fiduciary relationship, benefits received by them in such fiduciary capacity which enure, as a matter of law, to National American Bank, all as will be more fully shown below.

ARTICLE X.

The mismanagement and corruption of National American Bank by its present officers and directors named as defendants herein, examples of which are hereinafter set forth, demonstrate such bad faith and or lack of diligence and intelligence, as to constitute violations of defendants' duties to plaintiff's stockholder wards and other stockholders identically situated. Plaintiff further alleges that

the facts and transactions alleged below constitute legal causes for removal of defendants from office and legal causes for requiring of defendants full accounting and restitution as hereinbelow set forth.

ARTICLE XI

Plaintiff reserves the right to make parties plaintiff or defendant such other persons as might later appear proper, indispensable and or necessary to this action.

ARTICLE XII.

In the allegations hereinbelow, to avoid repeating redundantly hereinafter that one or more of the other defendants may have or did conspire with, consent to the actions of, or derive benefits directly or indirectly from the acts of Louis J. Roussel, all acts attributed and charged to defendant Louis J. Roussel are intended by plaintiff to be attributed also to same or all of the other conspirators named defendants herein, unless the context clearly indicates otherwise.

ARTICLE XIII.

In order to obtain his illegal gains and to unjustly enrich himself, through the stipulations, demands and receipts, directly and indirectly, by Louis J. Roussel, above mentioned, Louis J. Roussel caused the National American Bank of New Orleans to make loans that were in excess of those permitted by the National Banking Act, shifted loans in and out of the said bank, demanded the creation of additional corporate entities by the same shareholders of other corporations that had already borrowed in excess of the statutory limit, required endorsements and guarantees from shareholders of the various borrowers, trans-

ferred, exchanged and shifted collateral on existing loans on an indiscriminate basis, and directed the use of the proceeds from such loans to the advantage of himself and for other controlled corporate entities, and individuals, all to the detriment of the National American Bank of New Orleans, and its shareholders.

ARTICLE XIV.

Plaintiff further alleges that in order to promote his own interests and to illegally and fraudulently enrich himself, directly and indirectly, Louis J. Roussel used, imposed upon, overreached and took undue advantage of various customers of the National American Bank of New Orleans, all for his personal benefit, but to the detriment of said Bank and its shareholders. In these respects plaintiff further alleges as follows:

a. As a result of the close personal and business relationship which he established with such customers, Louis J. Roussel, as the controlling shareholder and director, acting in fact as Chief Executive Officer, of the National American Bank of New Orleans, became the principal banker and trusted financial advisor of certain persons, establishing thereby a fiduciary relationship, under which Louis J. Roussel was given, from time to time, full and complete information concerning the financial condition, including financial needs, of such persons and of their corporate and other interests, including prospective investments and business opportunities which were available to them.

b. Having gained financial control over such persons and their respective corporate and other entities, and also exercising complete domination and control over the National American Bank of New Orleans, and the other

banking institutions and corporate entities that were controlled by him, Louis J. Roussel was in a position to (and did) manipulate almost at will, loans by and from one bank or another, to swap loans, to transfer loans, to transfer and shift collateral, to cause defaults in existing obligations, without regard for the legality or illegality of any specific transaction and to reap personal gain and advantage at will, using said banks and the corporate entities as though the funds that were being loaned by them were his personal funds.

c. Over a period of years, the National American Bank of New Orleans had developed a system of correspondent banks, such as the Manufacturers Hanover Trust Company of New York, Mercantile National Bank of Dallas, the Exchange National Bank of Chicago, the Marine Midland Bank of New York City, the Franklin National Bank of New York, the Meadow Brook National Bank of Long Island (now Bank of North America), several banks in the State of Florida, and one or more other banks, and all of these were available to Louis J. Roussel, so that larger loans might be handled, thereby giving Louis J. Roussel greater opportunities to reap, for his personal advantage, larger emoluments and benefits without having to share them with any of his loan participants, or with the National American Bank of New Orleans, with the exception of the regular legal commissions or fees, as distinguished from the illegal consideration that was demanded and received by Louis J. Roussel.

ARTICLE XV.

Plaintiff further alleges that as said financially obligated persons increased their operations, individually and through corporate and other entities, they became more

and more in need of the advice and financial assistance that was available through Louis J. Roussel, and, as financial matters arose, Louis J. Roussel would decide whether or not and how he wishes to proceed, and, in each and every instance, such debtor was compelled to follow the advice and accept the demands of Louis J. Roussel, knowing that he was in a position to cause the disruption of all of the undertakings and their eventual financial ruin.

ARTICLE XVI.

Roussel used National American Bank as well as other corporations, persons and entities, on an indiscriminate basis. When Louis J. Roussel decided to assist such debtor, the latter rarely knew by whom a specific loan would ultimately be made and such a decision was exercised solely by Louis J. Roussel, who would shift his position at times for his own personal reasons; nor did such creditor know what the total cost of a loan would be and the debtor would frequently, at the last minute before the closing of the loan, be forced to accept less net proceeds than he anticipated, or he would be deprived of the right to allocate the use of the net proceeds as he wished, by having Louis J. Roussel instruct and demand him to use said proceeds in accordance with Louis J. Roussel's wishes, all regardless of his commitments to the National American Bank of New Orleans, and despite Louis J. Roussel's knowing of said commitments.

ARTICLE XVII.

Paragraphs 13 through 16 foregoing allege as set forth therein the general pattern Louis J. Roussel's manipulations of the said bank to its detriment in the business transactions of various borrowers from said bank over

a period of years, and the said illegal acts in such identical pattern were specifically committed in the form of a continuing illegal conspiracy as hereinbelow specifically alleged.

ARTICLE XVIII.

Plaintiff shows that shocking disclosures of specific mismanagement of the National American Bank by defendants herein, of knowingly making illegal loans running into the tens of millions of dollars and of the abuse of its National Banking Charter and franchise for the purpose of increasing the personal wealth of some or all of the defendants, and their friends and nominees, has been brought to light by sworn testimony in the series of the so-called Recile Bankruptcies presently pending in this Honorable Court, and have been freely reported in the public press. Indeed, the documentary evidence, including the records of National American Bank itself and of the Comptroller of the Currency filed in such proceedings, fully support and establish same; and the records of such Reorganization and Bankruptcy proceedings and the testimony and exhibits therein are hereby made part hereof for all purposes by reference thereto, being Docket Numbers 67-135, 67-678, 66-995, 67-705, 67-702 of this Honorable Court.

ARTICLE XIX.

To illustrate further the aforesaid nature and extent of the inside dealings and overreaching of Louis J. Roussel, plaintiff alleges some of defendants' dealings dating back to 1961 with one Sam J. Recile, said name being alleged in this respect to include corporate entities in which Recile was interested, including the Plaza Towers,

Inc., and Southern Land Title Corporation, of which Louis J. Roussel was a founder, and its subsidiaries, said Roussel being the first President of Southern Land Title Corporation (now in Chapter X Reorganization), owned one-third of its stock; and all corporate entities in which the said Recile was interested became principal customers of National American Bank because of the close relations of Recile and Roussel.

ARTICLE XX.

In the course of accomplishing the foregoing, Louis J. Roussel has caused National American Bank to engage in, and the said officers and directors have knowingly engaged in, the following violations of law, and in the following unsafe and or unsound practices in conducting its business:

1. Extending illegal loan in violations of law to Real Estate Developer Recile and his controlled corporations and associates exceeding $4,748,537.78, all as shown by the excerpt from the Bank Examiners Report of the Comptroller of the Currency of the Department of Treasury of the United States of America, attached hereto as Exhibit "4", some or all of which still exist and represent claims in bankruptcy or reorganization.

2. Permitting excessive concentrations of Real Estate Loans to Real Estate Developer Recile and or his controlled corporations and associates amounting to $10,084,598.41, all as appears from the excerpt from the Banks Examiners Report of the Comptroller of the Currency of the Department of the Treasury of the United States of America, attached hereto as Exhibit "5", some or all of which still exist and represent claims in bankruptcy or reorganization.

3. Requiring Real Estate Developer Recile to create a multiciplicity of corporate entities for the purpose of disguising illegal "overline" loans to Recile and his related companies and individuals to evade National Bank Regulations and confuse the National Bank Examiners, so as to conceal the extent and the flagrancy of the actual violations of law, all as shown by letters of National American Bank to C. Ellis Henican dated September 1, 1964, and to Stanley Lafargue dated October 16, 1964, in which National American Bank plainly and frankly states:

> "We are now in an overline situation relevant to Southern Land Title Corporation and construction draws are constantly coming in thus increasing this overline . . . On this basis then would you please give me some indication as to how you are progressing relevant to curing this matter as per our conversation the other day. . .
>
> ". . . on the basis of this overline situation it will be necessary that these loans be taken out of Southern Land Title Corp. and placed in other corporations. I am at this time just about to consummate the completion of the legal papers relevant to the switch. . .
>
> ". . . The Bank Examiners are in town and I would be put in a very embarrassing position to be caught in the middle of this deal. . .
>
> "Please take care of this matter immediately as I know the Examiners will be in here early next week."

4. Violations by Louis J. Roussel and his co-conspiring directors and officers of their fiduciary relationship to the Bank by causing Recile to repay their individual loans, while leaving the Bank exposed on its illegal loans, as shown by Exhibits A, B & C, attached hereto and made a part hereof.

5. Lending Sam J. Recile and his associated and affiliated corporations and individuals millions of dollars beyond the limits permissible by law or good business practice, knowing full well that such loans were "over-line" and illegal, thus jeopardizing and risking for their own personal gain the resources and funds of National American Bank and the savings of its depositors. One result of this reckless mismanagement is that today more than $6,000,000.00 of the funds of National American Bank is frozen, unavailable, and tied up, in individual bankruptcy and reorganization proceedings, most of which plaintiff fears will be lost, all as appears from the Schedules in the proceedings hereinabove referred to.

6. After the rading and denuding The Five Flags Building, Inc. by Louis J. Roussel, Harry Batt, Jr., and Seymour Weiss, all directors of National American Bank, along with others, forming 225 Baronne Street 28-story skyscraper office building on September 21, 1966; leaving it with no assets and an unpaid debt to National American Bank of $556,167.34, then *increasing* the National American Bank loans to such insolvent Five Flags Building, Inc. by the following amounts on the following dates:

November, 18, 1966	$189,972.31
December 5, 1966	83,383.24
December 30, 1966	104,194.08
	$377,549.63

All as appears from the Loan Account Records of National American Bank attached hereto as Exhibit 6. Plaintiff shows that at the times said loans were made the said directors of National American Bank knew absolutely that the Five Flags Building, Inc. had no assets, was in fact insolvent, and had no means of repaying said loan.

7. After thus increasing the indebtedness of the said insolvent Five Flags Building, Inc. to $933,718.97, switching the loan deceptively to C. Ellis Henican, already its guarantor, and actually lending him the money to make this "switch" and *even to pay the interest thereon* thus attempting to make it appear on the books of National American Bank as a current valid loan to Henican rather than to the insolvent Five Flags Building Corporation to deceive the bank examiners and other parties interested, when in truth and in fact said directors and officers well knew the Henican was and is equally insolvent as the Five Flags Building, Inc., and has testified under oath that he is himself about to declare bankruptcy. Plaintiff therefore demands judgment for $933,718.97, or such amount found owing, together with interest and costs, against all defendants, *in solido*.

ARTICLE XXI.

Plaintiff shows that he is informed and believes that the foregoing is by no means the full extent of the flagrant illegalities and mismanagements of National American Bank, that the above are simply instances in a pattern of the illegal activities and mismanagement of National American Bank by its present controlling officers and directors; that same shows an utter disregard for National Banking Laws, the Bank Examiners, and the purposes of the National Banking System as estab-

lished by Congress, and shows the lengths of deception to which defendants have gone and will go to mismanage and divert depositor and stockholder funds to pervert a National Banking Franchise into a license to extort from borrowers for their own personal gain, all at the risk and expense of National American Bank.

ARTICLE XXII.

Plaintiff shows that the purpose of such multiplicity of loans, and in such large amounts, to Real Estate Developer Recile, and of such illegal, unsafe and unsound business practices, was not to benefit National American Bank, but to permit Roussel and his nominees and associates *to garner unconscionable profits, fees and emoluments for Roussel from such bank transactions and loans by stipulating, demanding and receiving from Recile as a condition of granting, extending, or re-arranging such loans, or the collateral thereof, the following fees, considerations, profits and emoluments:*

1. Five Hundred (500) acres of land including five (5) producing oil wells out of the Sotan Tract, West Baton Rouge and Point Coupee Parish, Louisiana, deeded to Louis J. Roussel on June 11, 1964, C.O.B. 93, Folio 36, for a recited consideration of $50,000.00, offset by the required purchase by Southern Land Title Corporation of shares of its stock of which there appears no record of Roussel's ownership for $48,000, thus resulting in a net purchase price of $2,000 for assets valued:

a. Land	$1,000,000.00
b. Oil Wells and Mineral Rights	Unknown

2. Contemporaneously with the foregoing, Roussel demanded in cash, which he nominated Rena Taylor to receive	25,000.00
3. Five (5%) per cent of the gross rental income from the Audubon Building, a one-half (1/2) interest in which was owned by Southern Land Title Corporation	5,000.00
4. Cancellation of the Rental Commissions and costs of G. Brian Corporation on leases negotiated by it on space in the Audubon Building and Parkchester Shopping Center	100,000.00
5. The "bargain" sale for $25,000.00 of the Parkchester Shopping Center Shell Oil Co. service station easily worth $100,000.00, which he nominated Rena Taylor to receive by act of sale recorded COB 665, Folio 253	75,000.00
6. The "bargain" sale for $25,000 of the Parkchester Shopping Center National American Bank Branch easily worth $150,000, which he nominated his son, Louis J. Roussel, then a minor, to receive by act of sale recorded COB 664, Folio 241	125,000.00
7. In conjunction with the foregoing, in about February of 1965, Louis J. Roussel demanded $15,000 cash, which he nominated to be received by his son, Louis J. Roussel, III, and his daughter, Mrs. Charmaine Roussel Morel, from Southern Land Title Corporation	15,000.00

8. Through Republic Petroleum Co., a Roussel controlled corporation, on account of Monoghan mineral interests which never vested in Southern Land Title Corporation	200,000.00
9. Through the acquisition of 225 Baronne Building, by Roussel's new corporation, 225 Baronne St., Inc., at a profit estimated at	2,500,000.00
10. The "bargain" sale of thirty (30) acres, Tanglewood Estates, acquired by Vice Presidents LaRose, Courville, and Dubos for a recited consideration of $1500 by act recorded COB 392, Folio 53, this transfer was so obviously insupportable that the transferees have retroceeded said properties to Honorable Ingard O. Johanesen, Trustee in Bankruptcy for Sam J. Recile by act act before Richard J. Ganucheau, Notary in the office of Sehrt, Boyle and Wheeler, attorneys for National American Bank of New Orleans, recorded COB 503, Folio 240 on July 17, 1968	30,000.00
Total	$4,075,000.00

Plaintiff therefore demands judgment for $4,075,000.00 or such amount as found owing, together with legal interest and costs, against all defendants *in solido.*

ARTICLE XXIII

During the course of the foregoing, the said Roussel violated his fiduciary relationship both with National American Bank, and with customers of National American Bank, thereby causing injury and damage to the business image of National American Bank and thereby seriously effecting the ability of the bank's borrowers to meet their obligations, all of which is clearly illustrated by the instances of usurpation by Roussel of business opportunities brought to his attention by Recile seeking financial aid and advice in the acquisition of certain business oportunities. In each instance enumerated below, as a result of the inside position of Roussel as Recile's trusted financial advisor, Roussel violated his fiduciary trust relationship with Recile, by appropriating such business opportunities for his own personal gain, using his inside position with the National American Bank to borrow through controlled entities all or part of the funds necessary or convenient to take advantage of such business opportunities, namely:

1. Acquisition, ownership and operation of the Audubon Building.

2. Development of five hundred (500) acres, Sotan Tract.

3. Acquisition, ownership and operation of Bankers Union Life Insurance Company.

4. Acquisition, ownership and operation of Parkchester Shopping Center.

ARTICLE XXIV.

Plaintiff shows that he fears that, as a result of Roussel's having placed the National American Bank in the status of an "insider" in the corporate reorganization of The Five Flags Building, Inc., and other Recile reorganizations, Roussel has caused the Bank's position as a secured creditor to be jeopardized and its claims relegated to a position even inferior to the unsecured creditors and stockholders of the reorganized corporations, to the great loss and detriment of National American Bank.

ARTICLE XXV.

Plaintiff is informed, believes and therefore alleges that the National American Bank is presently owed in excess of $6,000,000.00, exclusive of interest and costs, on account of loans to Recile and his affiliated corporations and individuals, all as a result of the foregoing illegal acts and the foregoing unsafe and unsound business practices; that only a fraction thereof, if any, is salvagable out of said Reorganization; that National American Bank is seriously impaired in its operations and in its capital and surplus, by such funds being tied up and unavailable to it; that defendants should be required to pay such loans immediately so that the capital and operating funds of National American Bank, and its banking operations, be not impaired, and plaintiff demands judgment against all defendants *in solido* for $6,000,000.00, or such amount found owing, together with interest and costs.

ARTICLE XXVI.

Plaintiff further shows that as a result of the aforesaid dealings with Sam J. Recile by Louis J. Roussel,

acting ostensibly for National American Bank, but actually in Roussel's interest and on Roussel's behalf, the said Roussel possibly has subjected National American Bank, as a co-conspirator with Roussel, to suit by the Trustee in Bankruptcy for Sam J. Recile, or by Recile for causing the bankruptcy of Recile's affiliated corporations and his own personal bankruptcy, with resulting damage and loss to Recile amounting to $101,065,565.00, all as appears from the proposed suit attached to a Motion to Disclaim or for Authority for Trustee to File Suit, a copy of which said Motion and Proposed Suit is attached hereto and made a part hereof as Exhibit 7. Plaintiff fears that the said suit will be filed, and National American Bank thus exposed to great liability and loss as a result thereof, for which defendants Roussel and his collaborators should be required to indemnify National American Bank. Plaintiff therefore demands judgment against all defendants defendants *in solido* for the sum of $101,065,565.00 or such other sum as might be found due, together with interest and costs.

ARTICLE XXVII.

The acts and actions of Louis J. Roussel and of the other defendants herein, to the extent of their having cooperated, collaborated, connived and conspired with Louis J. Roussel, have caused, are causing, and will cause, serious damage and losses to the National American Bank of New Orleans; and the National American Bank fo New Orleans is entitled to a full and complete accounting and settlement from Louis J. Roussel on all loan transactions (including, but not limited to, the loan transactions hereinabove set forth and each and every one of the above and foregoing transactions which involve the illegal and fraudulent gains and profits by Louis

J. Roussel that belong to the National American Bank of New Orleans and the losses from the loans that were directly and indirectly imposed upon the said bank by Louis J. Roussel, in order to promote and effect his illgotten gains) that have been made by the said bank from the time that Louis J. Roussel first became connected therewith, until the present time, showing all and whatever sums, property and other consideration he may have stipulated and received for Roussel's benefit, directly or indirectly, in connection with his use of his domination and control over the National American Bank of New Orleans, and including any income or revenues that may have been produced therefrom, or thereon, since the time of their receipt until said sums, property and other emoluments are returned to their rightful owners. Accordingly plaintiff demands judgment in favor of the said bank and against defendants, *in solido*, for the aforesaid accounting and for the full and true sum of whatever amounts are adjudged owing and due to said banks by defendants, with legal interest and costs.

ARTICLE XXVIII.

The shares owned by the children of Frank Spalitta, plaintiff, were owned at the time of the transactions complained of herein, or if any such specific transactions were commenced or completed prior to said acquisition, such specific transaction was only a relatively short time prior to said acquisition and the said specific transaction was a part of a continuing scheme, plot and conspiracy to defraud the immediate parties involved through the use of the control, resources and facilities of the National American Bank of New Orleans; that this action is not a collusive action to confer jurisdiction on a court of the United States which it would not otherwise have; and

Frank Spalitta, plaintiff, on behalf of his said minor children, does fairly and adequately represent the interests of the shareholders other than Louis J. Roussel and those who have cooperated, collaborated, conspired or participated with him or the other defendants in the actions complained of herein.

ARTICLE XXIX.

In accordance with Rule 38 of the Federal Rules of Civil Procedure, and the Seventh Amendment to the Constitution of the United States, plaintiff demands a trial by jury of each and every fact which may be controverted by any defendant herein.

ARTICLE XXX.

The Honorable William B. Camp is the duly appointed, qualified and acting Comptroller of the Currency of the Department of the Treasury of the United States of America, charged with the responsibilities of, among other things, examining into the operations and affairs of national banking associations, including National American Bank, and the directors and officers thereof, to determine whether said bank officers and or directors shall have continued to violate any law relating to such bank or shall have continued unsafe and unsound practices in conducting the business of such bank, and to certify the facts thereof under the cricumstances set forth in 12 USCA 77 to the Board of Governors of the Federal Reserve System for their further action authorized by said law; and the aforesaid illegal conspiracies and specific acts of defendants in violation of the Banking Laws of the United States of America are within the jurisdiction of the said Comptroller to whom the stockholders and deposi-

tors are entitled to look, and upon whom they are entitled to rely, to examine periodically the affairs of National American Bank, and for protection against the mismanagement and corruption of the affairs of said bank, and the said Comptroller is an interested party and, pursuant to Rule 19(a), Federal Rules of Civil Procedure, the said Comptroller is a necessary and indispensible party to this action. Plaintiff shows that if the said Comptroller of the Currency continues to fail, neglect, and refuse to act under the circumstances disclosed by this complaint, then this Honorable Court, for the protection of the National American Bank, its depositors and innocent stockholders, should remove the abovenamed officers and directors from office.

WHEREFORE, PLAINTIFF DEMANDS judgment *for the use and benefit of the shareholders* of National American Bank of New Orleans, exclusive of defendants herein exclusive of any presently unknown shareholder who may have cooperated, collaborated, conspired or participated with defendants in the actions complained of herein, and against LOUIS J. ROUSSEL, CLEM H. SEHRT, WILLIAM H. LAROSE, JENNINGS L. COURVILLE, RALPH L. DUBOS, LOUIS J. ROUSSEL, III, HARRY J. BATT, JR., and any person subsequently made a party defendant, *in solido*, as follows:

a. For $6,000,000.00 representing the indebtedness of Sam J. Recile or his endorsers and guarantors, presently filed in the Chapter X, Reorganization Proceedings pending in this court, and owed to National American Bank of New Orleans and such other sum as the bank might lose as claimed in the above and foregoing complaint.

b. For FOUR MILLION SEVENTY-FIVE THOUS-

AND AND NO/100 ($4,075,000.00) DOLLARS as claimed in Article XXII of this claim.

c. For NINE HUNDRED THIRTY THREE THOUSAND SEVEN HUNDRED EIGHTEEN AND 97/100 ($933,718.97) DOLLARS representing funds lost by defendants' dealings with the Five Flags Building, Inc.

d. For an indemnity bond or undertaking in favor of National American Bank of New Orleans in the amount of ONE HUNDRED ONE MILLION SIXTY FIVE THOUSAND FIVE HUNDRED SIXTY FIVE AND NO/100 ($101,065,565.00) DOLLARS.

e. For ONE HUNDRED ONE MILLION SIXTY FIVE THOUSAND FIVE HUNDRED SIXTY FIVE AND NO/100 ($101,065,565.00) DOLLARS as demanded in Article XXVI.

f. That all sums, property and benefits unjustly received by defendant be declared held by them in trust for National American Bank of New Orleans and that defendants render a full and complete accounting and settlement thereon to National American Bank of New Orleans, including all income and revenues derived therefrom.

g. Ordering the removal of defendants from office.

h. That all of the controverted issues of fact herein be tried by jury.

i. That legal interest be awarded against all defendants in accordance with the request contained in the above and foregoing complaint, together with costs.

j. For the reasonable fees of plaintiff's attorneys and all expenses incurred in the prosecution of this action.

k. That plaintiff be given such other relief, including the right to name other parties defendant herein, and to enlarge the claims, as the proof may ultimately indicate.

JAMES J. MORRISON
National Bank of Commerce Building
New Orleans, Louisiana
524-5631

PAUL C. TATE
Sixth at Chestnut
Mamou, Louisiana
Attorneys for Plaintiff

VERIFICATION

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared

FRANK SPALITTA

who upon first being duly sworn on his oath, did depose and say:

That he is the plaintiff in the above and foregoing complaint, that he has read same, and that all of the allega-

tions of fact therein contained are true and correct, to the best of his information, knowledge and belief.

FRANK SPALITTA

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 5TH DAY OF AUGUST, 1968.
(Signed) JAMES J. MORRISON
Notary Public

EXHIBIT 1

Frank Spalitta
Five Ten O'Keefe Avenue
New Orleans, Louisiana
July 25, 1968
68-1479

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Chairman of the Board, Mr. John Legier
Vice Chairman of the Board, Mr. Clem H. Sehrt
President, Mr. Harold W. Mischler and
Members of the Board of Directors of the
National American Bank in New Orleans
200 Carondelet Street
New Orleans, Louisiana

Gentlemen:

As a shareholder of the National American Bank, I would like to ascertain from you whether or not Louis J. Roussel and the various banks and corporations which he controls and any person intimately associated with him

have delivered to you since June 1964 any sums, property or other things of value which either may have been delivered to Louis J. Roussel or one or more of the corporate entities or individuals in connection with any loan which you may have made to Sam J. Recile, Southern Land Title Corporation, Sotan, Inc., Place Vendome Corporation, Puritan Oil & Gas of New England, Inc., Bourbon Kings Hotel Corporation, Lakeview Properties, Inc., The Five Flags Buildings, Inc., The Plaza Towers, Inc., H & H Construction Corporation and G. Brian Corporation.

If Louis J. Roussel has delivered or has caused to be delivered to you any such sum, property or other things of value, I would like to request that you give me a detailed statement covering each such sum, property or other thing of value, including the amount, the description, and value, if available, of each such piece of property or thing of value and the date of your receipt from Louis J. Roussel or any such corporation or person.

If you have not received any such sums, property or other things of value, have you any knowledge of any such sums, property, or other things of value that may have been received by Louis J. Roussel or his nominee or nominees in connection with any loan transaction, including extensions which you may have had with the parties named above; and if you have no such knowledge, have you undertaken to determine whether or not he or his nominee or nominees have received such sums, property or other things of value in consideration for or in connection with any loan transaction which you may have made with any of the said parties, and if so, what have you determined under your investigation?

Do you intend to make any demands upon or institute

against Louis J. Roussel or any one of his nominees, including any of his other controlled banks, his controlled life insurance companies, his other controlled corporations, or the persons whom he controlls including certain officers of your Bank and mmbeers of Louis J. Roussel's family or his close associates to recover any such sums, property, or other things of value which might have been received by him or them in consideration for or in connection with any loans which you may have authorized and made?

Incidentally, my concern about this matter is prompted by the fact that your shares on the open market have lost a substantial portion of their prior market value and your concern about the matter should be in realizing that under Section 503 of Title 12 of the U. S. Code, each director of a bank that is a member of the Federal Reserve System "shall be held liable in his personal and individual capacity for all damages which the member Bank, its shareholders, or any other persons shall have sustained in consequence of "a known violation of Section 220 of Title 18 of the U. S. Code; and Section 220 provides that any director of a Bank, the deposits of which are insured by the F.D.I.C. who stipulates for or receives or consents or agrees to receive any fee, commission or thing of value from any person, firm or corporation for procurring or endeavoring to procure for any such person, firm or corporation from any such bank any loan or extension or renewal of loan or substitution of security, shall be fined not more than $5,000.00 or imprisoned not more than one year or both.

It appears that there are similar prohibitions in the Louisiana Banking Law.

In view of the above, I would like to have you advise me the names of each one of your directors who approved each loan to each one of the parties above named, knowing at the time that Louis J. Roussel had stipulated for and received fees, commissions, things of value, emoluments or any other consideration directly or indirectly for the National American Bank's having made said loan including renewals, extensions, substitution of collateral or substitution of maker or makers.

The fact that there was a serious overline condition with respect to loans to Sam J. Recile, including the several entities and individuals associated with him has been brought out in recent testimony.

From the time that you first knew of the overline condition and while the said overline condition existed, did you approve one or more additional loans, including renewals, extensions, substitution of collateral or substitution of maker or makers, to any one or more of the parties who were included in the determination that the original overline situation existed. Please therefore give me the date, amount and name of the borrower involved in such additional loan. In addition, please furnish me the name of each director who approved each such loan, renewal, extension, substitution or collateral or substitution of maker or makers.

Awaiting your immediate response, I am,

Very truly yours,

FRANK SPALITTA
Custodian of
Karen Elizabeth Spalitt and
Gina Theresa Spalitta
under Louisiana Gift to Minors Act

cc:
Federal Deposit Insurance Corporation
Controller of Currency of the United States
Louisiana State Banking Commission
Mr. James J. Morrison

Individual Copies to:

Mr. Harry J. Batt, Sr.
Mr. W. Stanley Behrman
Mr. Alfred W. Brown, Jr.
Mr. Allen H. Generes
Mr. Bernard J. Grenrood
Mr. Herbert Jahncke
Mr. William J. Kross
Miss Margaret E. Lauer
Mr. Neville Levy
Mr. Robert S. Maestri
Mr. Hester Plauche
Mr. Cecil M. Shilstone
Mr. Seymour Weiss
Mr. Louis J. Roussel
Mr. Louis J. Roussel, III

EXHIBIT 2

(Letterhead of Sehrt, Boyle & Wheeler)

July 26, 1968.

Mr. Frank Spalitta,
Custodian of Karen Elizabeth Spalitta
and Gina Theresa Spalitta
under Louisiana Gift to Minors Act,

510 O'Keefe Avenue,
New Orleans, Louisiana.

Dear Mr. Spalitta:

This acknowledges copy of your letter of July 25, 1968, sent to me. As a director and officer of National American Bank, I hasten to make this my personal reply to your communication.

(1) I have requested the United States Attorney, Mr. Louis J. La Cour, to make an appropriate and proper investigation to the end of presenting same to the United States Grand Jury, of all dealings, loans, your individual actions, those of Sam J. Recile and his corporate interests, of the National American Bank and those of any of its directors who might have had anything to do with respect to same. This request was made in order that appropriate and proper action would ultimately be taken with respect to any and all violations of the law.

(2) It shall be my avowed purpose to testify before Judge Edmund Talbot in the bankruptcy proceedings of Sam J. Recile to answer any and all questions under oath regarding any matters contained in your inquiry, exclusive of those pending before Judge Heebe.

(3) Likewise, it shall be my avowed purpose to testify before Judge Fred Heebe in the 225 Baronne building reclamation proceedings and in any other matters pending before him and at said time, I shall answer any and all questions pertaining to those matters.

It is my fervent wish that the trial in the 225 Baronne building reclamation proceeding would be resumed immediately in order that we might have an opportunity to present our side of same to the Court.

You will note that under separate cover I am sending a copy of this communication to Mr. Louis J. La Cour, United States Attorney, and I shall attach and transmit to him a copy of your communication, in order that he may be informed. Also, you will note the appropriate federal agencies are being forwarded a copy of this communication.

You may be assured that both Mr. Louis J. Roussel and the writer were in full accord when Mr. Louis J. La Cour, United States Attorney, was asked several weeks ago to investigate these matters, some of which are already in process.

Very truly yours,

(Signed) CLEM H. SEHRT.
CLEM H. SEHRT.

CHS:CZC

Copies sent to:

The Honorable William B. Camp, Controller of the Currency, Washington, D. C.

Mr. W. A. Robson, Regional Comptroller of the Currency, Memphis, Tenn.

The Honorable Louis J. La Cour, United States Attorney, New Orleans, La.

Federal Deposit Insurance Corporation

Louisiana State Banking Commission,

Mr. James J. Morrison, Attorney at law, New Orleans, La.

Mr. Harold W. Mischler, President, National American Bank of New Orleans

EXHIBIT 3

(Letterhead of Sehrt, Boyle & Wheeler)

July 26, 1968

CERTIFIED MAIL

Mr. Frank Spalitta
510 O'Keefe Avenue
New Orleans, Louisiana

Dear Mr. Spalitta:

This office represents the National American Bank of New Orleans. Mr. Harold W. Mischler, its President, has referred to our attention your letter dated July 25, 1968, addressed to the Chairman and Vice-Chairman of its Board, its President, and the members of its Board of Directors. We have been asked to respond to your letter on behalf of the National American Bank.

In our opinion, your letter contains nothing but vile and insidious innuendoes which have absolutely no basis in truth or in fact. The veiled charges which you have made in your letter have proved to be absolutely scurrilous, as evidenced by the proceedings in the Federal District Court before Judge Heebe, concerning the reclamation proceedings for the 225 Baronne building. Letters such as yours are best answered in the proper forum, a court of law!

Demand is again made upon your to discharge your numerous obligations to the National American Bank of New Orleans resulting from your endorsing and or guaranteeing various loans made by it to Sam J. Recile and

his bankrupt corporations, more particularly for moneys obtained under questionable circumstances.

Yours truly,

(Signed) PETER J. BUTLER
Peter J. Butler

PJB/mag

cc: Federal Deposit Insurance Corporation
Controller of Currency of the United States
Louisiana State Banking Commission
Mr. James J. Morrison
Individual Copies to:
Mr. Harry J. Batt, Sr.
Mr. W. Stanley Behrman
Mr. Alfred W. Brown, Jr.
Mr. Allen H. Generes
Mr. Bernard J. Grenrood
Mr. Herbert Jahncke
Mr. William J. Kross
Miss Margaret E. Lauer
Mr. Neville Levy
Mr. Robert S. Maestri
Mr. Hester Plauche
Mr. Cecil M. Shilstone
Mr. Seymour Weiss
Mr. Louis J. Roussel
Mr. Louis J. Roussel, III

VIOLATIONS OF LAW.

LOANS EXCEEDING THE LIMIT PRESCRIBED BY 12 U.S.C. 84

Name of Borrower	Amount	Collateral	Comments
Southern Land Title Corp. (Parent Company)	210,662.50	Unsecured	[illegible]
do	25,000.01	do	Overdraft
do	670,210.50	Real Estate	$1/2% previously sold to others. See classified line and large line.
Subsidiaries:			
Purlton Oil & Gas	1,169,243.44	Real Estate	
Five Flags Building Corp.	1,765,000.00	Real Estate	$70% previously sold to others. Also excess individually.
Lelichlion Apartments	1,026,620.59	Real Estate	$50% previously sold to others.
Clo Square Corporation	900,400.00	Real Estate	
Plaza Towers, Inc.	115,267.71	Real Estate	
Seton, Inc.	900,000.00	Real Estate	$600% previously sold to others.
do	18,202.20	Unsecured	Overdraft
	6,501,734.65		
Loss Basis 10% Limit	1,753,197.08		
Excess	4,748,537.78	/	Approved by all directors in regular course.

The approving directors are reminded of their individual liability for any loss occuring in an excessive loan.

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HENICAN 4
EXHIBIT 4
P.G. 1

BEST AVAILABLE COPY

79,121.10	Barbara Courtney Recile (wife of Sam Recile) Guaranteed by Sam Recile, Southern Land Title Corp., Frank Spalitta, and John Massengill.	79,121.10
257,268.00	Bourbon-Orleans Apt. Hotel (P'ship of Sam J. Recile and Wilson P. Abraham) Guaranteed by Sam Recile, Wilson P. Abraham, C. Ellis Henican, Chester P. Golpi, J. W. Whitty, Jr., Leslie J. Healy, Jas. H. Pfister, Frank Spalitta, Julian E. Hotard, and John B. Massengill. Participations sold aggregating $2,315,412.00.	257,268.00
60,400.91	Country Club Homes, Inc. (principals are C. Ellis Henican and Phillip E. James)	60,400.91
52,395.44	Leslie J. Healy (shown as a principal and guarantor on several lines shown above)	52,395.44
209,479.97	C. Ellis Henican Guaranteed by Southern Land Title Corp.	209,479.97
25,000.00	C. Ellis Henican, Jr. Guaranteed by C. Ellis Henican	25,000.00
10,000.00	C. Ellis Henican (Joint Sam J. Recile)	10,000.00
1,080,000.00	Philip E. James Guaranteed Southern Land Title Co., Sam J. Recile, C. Ellis Henican, and Frank Spalitta	1,080,000.00
415,872.00	Life Insurance Co. of the South Guaranteed by Southern Land Title Corp. Pts. sold aggregating $30G%	415,8[illegible]
652,769.64	D. M. White Collateraled by notes of Southern Land Title Corp.	652,769.64
22,257.39	Lloyds Home Loan Corp. Collateraled by notes of Sam Recile	22,257.39
86,000.00	Leslie J. Healy & Co. Investments Leslie J. Healy endorser.	86,000.00
	(Participations sold aggregate $4,190,412.00)	10,084,593.41

The above concentration represents 60.64% of adjusted capital structure (including participations 85.84%).

EXHIBIT 4
PG 2

$199,603.00	Commercial Propert .Investment Corp. Subsidiary Southern Land Title Corp. See other loans especially mentioned.	199,603.00
1,425,000.00	Five Flags Building, Inc.($25M participation sold). Subsidiary of Southern Land Title Corp. Classified.	1,425,000.00
315,986.26	G. Brian Corp. Subsidiary of Southern Land Title Corp. Classified. Guaranty of Sam J. Recile.	315,986.26
455,465.71	Place Vendome, Inc. ($562,428.79 sold). Subsidiary of Southern Land Title Corp. Guaranty of Sam J. Recile.	455,465.71
250,189.97	Plaza Towers, Inc. Subsidiary of Southern Land Title Corp.	250,189.97
1,880,482.42	Puritan Oil and Gas of New England, Inc. Subsidiary of Southern Land Title Corp. Guaranty of Sam J. Recile.	1,880,482.42
1,435,000.00	Satan, Inc. ($2,565M sold). Bank's portion reduced to $750,000 during the examination. Subsidiary of Southern Land Title Corp.	1,435,000.00
52,395.44	Leslie J. Healy. Secured by not of Sam J. Recile. Paid during the examination.	X 52,395.44
200,000.00	C. Ellis Monican. Secured by debentures of Plaza Towers, Inc. Guaranteed by Southern Land Title Corp. Classified.	200,000.00
259,402.04	Philip E. James. Plaza Towers, Inc. debentures collateral to $200M of line. Guaranteed by Southern Land Title Corp. and Sam J. Recile. Classified.	259,402.04
149,581.87	Barbara Courtney Recile. Wife of Sam J. Recile. Classified.	149,581.87
176,421.96	Sam J. Recile. Classified.	176,421.96
550,000.00	D. M. White. Collateraled by notes of Southern Land Title Corp. See other loans especially mentioned. Management does not concur that this loan should be included in the concentration.	550,000.00
	Participations sold aggregate $3,152,424.79.	7,329,528.67
	The above concentration represents % of adjusted capital structure, % including participations sold.	

Exhibit 2

LEDGER — ROAD COUNCIL "A" — PLAN "A"

REFER TO RESERVE FOR LOSSES — LEDGER

DAY MONTH	CLASS		ITEM NUMBER	CLASS	CREDIT	DATE	BALANCE
5,301	TS	2,350,000.00				DEC 16'64	2,350,000.00
			45,301	PA	400,000.00-		
			45,301	PA	200,000.00-		
			45,301	PA	50,000.00-	DEC 17'64	1,700,000.00
			45,301	PA	40,000.00-	DEC 24'64	1,660,000.00
5,301	PA	50,000.00				DEC 31'64	1,710,000.00
			45,301	PA	100,000.00-	JAN 6'65	1,610,000.00
5,301	PA	40,000.00				FEB 22'65	1,650,000.00
7,691	DS	395,896.03				MAR 14'65	2,045,896.03
8,210	DS	115,000.00				APR 5'65	2,160,896.03
8,696	DS	185,000.00				APR 27'65	2,345,896.03
5,301	PA	100,000.00					
5,301	PA	200,000.00					
5,301	PA	400,000.00					
6,722	TS	2,350,000.00	[illegible]	PA	100,000.00-		
			[illegible]	PA	400,000.00-		
			[illegible]	PA	200,000.00-		
			45,301	TS	2,350,000.00-FN		
			7,691	DS	395,896.03-	APR 28'65	1,950,000.00
			48,696	DS	185,000.00-	MAY 14'65	1,765,000.00
6,722	PA	400,000.00					
6,722	PA	200,000.00					
6,722	PA	100,000.00	48,722	PA	200,000.00-		
			1,907	PA	300,000.00-		
			48,722	TS	740,568.89-P6		
			48,210	DS	115,000.00-	JUL 13'65	1,109,431.11
2,722	PA	200,000.00				JUL 30'65	1,109,431.11
1,907	PA	300,000.00				AUG 17'65	1,109,431.11
			48,722	TS	400,000.00-P2		
			48,722	TS	35,851.37-P3	JAN 7'66	1,173,579.74
			48,722	TS	250,000.00-P4	FEB 18'66	923,579.74
8,006	DS	1,450,000.00FN	48,722	TS	923,579.74-P5	APR 13'66	1,450,000.00
9,760	DS	1,450,000.00FN	58,006	DS	1,450,000.00-FN	JUN 17'66	1,450,000.00
			59,760	DS	893,832.66-PC	SEP 21'66	556,167.34
						NOV 16'66	746,139.80
801	DS	188,972.31				DEC 5'66	829,528.89
918	DS	83,383.24				DEC 30'66	933,716.97
438	DS	104,229.80					

PHOTO COPY

EXHIBIT 6

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 29622

FRANK SPALITTA, as Guardian of the Minors,
KAREN ELIZABETH AND
GINA THERESA SPALITTA,
Plaintiff-Appellant,

versus

NATIONAL AMERICAN BANK OF NEW ORLEANS,
ET AL,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

(May 26, 1971)

Before CLARK, Associate Justice*, and GEWIN and RONEY, Circuit Judges

CLARK, Associate Justice: This is an appeal from the decision of the United States District Court for the Eastern District of Louisiana dismissing a stockholder's derivative and class action based on alleged violations of

*Associate Justice, United States Supreme Court (Ret.), sitting by designation.

the National Banking Act.[1] The appellant filed the suit as guardian of his two minor daughters who owned 25 shares of stock of the National American Bank of New Orleans, La. The appellees are the Bank, as a nominal party, and some of its officers and directors who are alleged to be the principal executive officers and directors of the Bank and actually control it. The suit was brought for the benefit of the Bank as a class action on behalf of all stockholders similarly situated. The gist of the complaint is that the Bank has suffered substantial losses because of certain fraudulent and illegal acts and transactions of the appellee officers and directors which were in breach of their fiduciary responsibility. The trial court dismissed the action on motion of the appellees, finding that some of the claims were barred by the contemporary ownership rule which requires that the acts complained of occur while the complaint is a stockholder; another claim was held premature because the property involved was in litigation in another Division of the Court; and a final claim was held moot since the alleged gift of properties to three vice presidents of the Bank in connection with banking transactions had been reconveyed to the grantor's successor, the Trustee in Bankruptcy. We have examined the record carefully and have concluded that the motion to dismiss should not have been granted. We, therefore, vacate the judgment and remand the case for trial. We pretermit the issue as to the refusal of the trial judge to recuse himself. As appellees indicate, the tiral of the case on remand will be by another judge which will avoid the issue. The case has been re-allotted twice before which

[1] It was alleged (a) that the Bank with the knowledge of its officers and directors made loans in excess of the legal limits prescribed by 12 U.S.C. § 84, made actionable by 12 U.S.C. § 93, and (b) that Louis J. Roussel as a director and principal shareholder obtained financial benefits for making or extending loans in violation of 18 U.S.C. § 215, made actionable by 12 U.S.C. § 503.

indicates that perhaps it may be one of those unusual cases where the assignment of a judge from another district may be necessary.

I.

The case being here on an order sustaining a motion to dismiss on the ground that the complaint fails to state a claim upon which relief can be granted, we must accept the facts that are well pleaded to be true and resolve them in the light most favorable to the appellants. To sustain the dismissal we must conclude that plaintiff can prove no facts entitling him to relief. *Conley* v. *Gibson*, 355 U.S. 41, 45-48 (1957);[2] *Mitchell* v. *E-Z Way Towers Inc.*, 269 F. 2d 126 (C.A. 5, 1959); *City of Daytona Beach* v. *Gannett, Fleming Corddry & Carpenter Inc.*, 253 F.2d 771 (C.A. 5, 1958); Eyerly *Aircraft Co.* v. *Killian*, 414 F.2d 591, 602 (C.A. 5, 1969).

The complaint consists of 22 pages of allegations with seven exhibits of which number 7 is itself over 50 pages with attached schedules. Appellant alleges a conspiracy among the individual appellees to use their official connections with the Bank to serve their own private gain, pecuniary aggrandizement and benefit. Specifically it alleges that the general pattern of manipulation was for

[2] The Court there established the following principles:
"[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." 355 U.S. at 45-46
"[T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. * * * The federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." 355 U.S. at 47-48.

appellee Louis J. Roussel to become the principal banker and trusted financial advisor to certain customers of the Bank who would, in this fiduciary relationship, give to Roussel full and complete information as to the financial condition and needs of the customer. Having gained the confidence of such customers Roussel would through the aid of other appellees and as a Director and member of the Executive and Loan Committee of the Bank, manipulate loans, swap and shift collateral, call obligations prior to due dates, exceed permissible loan limits and secrete the same from bank examiners through the shifting of loans and creating additional corporate creditors owned by the same customer or customers among which the overline was spread. In consideration of these manipulations Roussel would exact fees, emoluments, gifts, etc. from the favored customer for himself or his nominees, all in violation of the National Banking Act.

The complaint gives names and dates of various manipulations and asserts that as a result the Bank made over $10 million of real estate loans to one customer, Sam Recile, now in bankruptcy. And further that an additional $6 million of bank funds are presently frozen in bankruptcy cases.

One customer of the Bank and alleged victim of the conspiracy comes in for special attention, one Sam Recile. Beginning in 1961 and continuing until his bankruptcy, a long list of exactions were extracted from Recile by Roussel and other appellees, all of which arose out of transactions with the Bank. They include cash payments, transfers, sales, gifts and swaps to Roussel and his nominees in consideration of present or prior favors from the Bank including not only overline credit but renewals, shift of collateral etc. Among the properties alleged to have been

involved in these transactions was mineral land valued at $1 million; three buildings in New Orleans valued at several million dollars; two buildings at the Park Chester Shopping Center worth $200,000; mineral interests through Republic Petroleum Company, $200,000; and 30 acres of Tanglewood Estates that was deeded to three vice presidents of the Bank and retroceeded to his Trustee after Recile's bankruptcy.

We do not detail all of the overt acts alleged in the complaint and attached exhibits but have selected representative samplings from those alleged therein.

II.

The District Judge dismissed the case on February 11, 1970 with the following order:

> "IT IS ORDERED that the motion by defendants to dismiss is hereby granted.
>
> Eight counts of the petition are invalid under 28 U.S.C. 231 and LA CCP 596 (1) the transactions complained of must have occurred when plaintiffs were stockholders.
>
> The ninth count is premature as the status of the property located at 225 Baronne Street is presently in litigation in Judge Heebe's division of this Court.
>
> Count ten is moot as the property in question has been reconveyed by request of the Court to the Trustee in Bankruptcy for Sam J. Recile."

Under this order the trial court subsumed — and we agree — that the appellant had standing to sue both on the derivative as well as the class action. But it found fault with what it construed to be the ten counts on which the appellant based his action. As the appellees point out, the ten count reference has to do with Article XXII of the complaint only. The court does not touch upon the remaining claims alleged. For example, Article XX alleges seven specific overt acts based upon violations of the National Banking Act. The first five have to do with the Sam Recile overline transactions and the sixth and seventh with another claim with reference to The Five Flags Building, Inc. and the Henican loan "to deceive the bank examiners", a violation of 18 U.S.C. 1005 which visits liability under 12 U.S.C. 503 upon the appellees as officers and directors of the Bank. Likewise Article XXIII alleges three other manipulations, all within the ambits of the conspiracy, and covering the Audubon Building, the Parkchester Shopping Center, the Bankers Union Life Insurance Company, and the 500 acre Sotan Tract.

Moreover, this is a class action to which the contemporaneous ownership rule would not apply. *Zahn* v. *Transamerica Corp.*, 162 F. 2d 36, 48 (C.A. 3, 1947); see also *Surowitz* v. *Hilton Hotels Corp.*, 383 U.S. 363, 12 U.S.C. § 52, where the Court said:

> "We cannot construe Rule 23 or any other one of the Federal Rules as compelling courts to summarily dismiss, without any answer or argument at all, cases like this where grave charges of fraud are shown by the record to be based on reasonable beliefs growing out of careful investigation."

Furthermore, a conspiracy is alleged along with a continuous course of illegal conduct beginning in 1961 in violation of the National Banking Act which raises a federal question. Nor is the 225 Baronne Street transaction premature because of the bankruptcy. The adjudication here would not affect the bankruptcy since the recovery sought is not the property but judgment against appellees for the damage if any the Bank has suffered by reason of the illegal transaction. This is likewise true of the property in Tanklewood Estates which was conveyed to the Trustee in Bankruptcy. The appellant seeks damages for the Bank against the three vice presidents and not the return of the property. Cf. *Corsicana National Bank* v. *Johnson*, 251 U.S. 68, 83-84 (1919).

We also note that the suit is for an accounting of the various matters between the Bank and the appellees which would likewise be within the jurisdiction of the Court.

III.

While the complaint is perhaps not an example of excellent in pleading, we believe it quite sufficient under *Conley* v. *Gibson*, supra, to withstand the motion to dismiss which must be strictly construed against the moving party. Moreover the atmosphere surrounding the complaint is an odious one that is imbued with a public interest and requires decision upon evidence not pleading. See *Poller* v. *Columbia Broadcasting System, Inc.*, 368 U.S. 464, 473, (1962).[3]

---

[3] "We believe that summary procedures should be used sparingly in complex . . . litigation where motive and intent play leading roles, the proof is largely in the hands of the alleged conspirators, and hostile witnesses thicken the plot."

Since the case must be tried on some of the claims at the least, we believe the effective administration of justice requires that the judgment be vacated as to the entire complaint. Perhaps before trial the appellant will clarify his contentions more clearly by amended pleading. The judgment is therefore vacated and the cause remanded for trial on its merits.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
CIVIL ACTION No. 68-1479
SECTION "A"

FRANK SPALITTA, AS GUARDIAN OF THE MINORS, KAREN ELIZABETH AND GINA THERESA SPALITTA,

Plaintiff

versus

NATIONAL AMERICAN BANK OF NEW ORLEANS, LOUIS J. ROUSSEL, CLEM H. SEHRT, WILLIAM H. LaROSE, JENNINGS L. COURVILLE, RALPH L. DUBOS, LOUIS J. ROUSSEL, III, HARRY J. BATT, SR.

Defendants

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
CIVIL ACTION No. 68-1479
SECTION "F"

FRANK SPALITTA, AS GUARDIAN OF THE MINORS, KAREN ELIZABETH AND GINA THERESA SPALITTA,

Plaintiff

versus

NATIONAL AMERICAN BANK OF NEW ORLEANS, LOUIS J. ROUSSEL, CLEM H. SEHRT, WILLIAM H. LaROSE, JENNINGS L. COURVILLE, RALPH L. DUBOS, LOUIS J. ROUSSEL, III, HARRY J. BATT, SR.
Defendants

MOTION TO DISMISS

NATIONAL AMERICAN BANK OF NEW ORLEANS, LOUIS J. ROUSSEL, CLEM H. SEHRT, WILLIAM H. LaROSE, JENNINGS L. COURVILLE, RALPH L. DUBOS, LOUIS J. ROUSSEL, III, and HARRY J. BATT, SR., all Defendants named in the above named matter, move to dismiss the above numbered and entitled cause for the reasons that:

I.

Plaintiff has no right to a "derivative action by shareholder" for the reason that Plaintiff does not "fairly and adequately represent the interest of the shareholders . . . in enforcing the right of the corporation . . . (Federal Rules of Civil Procedure 23.1) and Plaintiff has no right to prosecute this suit as a "class action" for the reason that

(a) the claims of the representative parties are not typical of the claims of all shareholders, and

(b) Plaintiffs are not representative parties who will fairly and adequately protect the interest of all shareholders,

in that:

i. Plaintiff's interest is in infinitesmal, having only 25 shares of a total of 300,000 shares of the capital stock of the National American Bank of New Orleans;

ii. Frank J. Spalitta, appearing hereto, however, in his fiduciary capacity, cannot be distinguished from Frank J. Spalitta, the individual and he has interests in conflict with that of the National American Bank of New Orleans;

iii. if Frank J. Spalitta, individually, had met the obligations undertaken by him not performed in accordance with his written obligations and undertakings, there would have been no color of claim on which such a suit could be predicated and his involvement and personal liability as endorser-guarantor or otherwise disqualifies him whether individually or under the theoretical guise as a fiduciary of trusts created for his children to bring a class or derivative action.

I(A)

Plaintiff has no right to bring this suit as a derivative relief appropriate to a class action may be granted.

II.

Plainaiff has no right to bring this suit as a derivative action under Rule 23.1 (Rules of Civil Procedure) for the reason that it is not an action "to enforce a right of a corporation . . . the corporation . . . having failed to enforce a right which may properly be asserted by it . . ."

III.

With respect to the following listed paragraphs of Plaintiff's prayer, this suit should be dismissed because there has been no loss to the Bank at this time, and, therefore, this suit is premature:

(a) For $6,000,000.00 representing the indebtedness of Sam J. Recile, or his endorsers, which, as the payer says "the bank *might* lose".

(c) For $933,718.97 representing funds allegedly lost in dealing with "Five Flags Building, Inc." which amount is not lost until the completion of pending proceedings in Bankruptcy of Five Flags Building, Inc.

(e) For $101,065,565.00 for which The National American Bank of New Orleans is "possibly subjected", suit for which "plaintiff fears . . . will be filed. ..." (Allegation XXVI).

IV.

Plaintiff has no right to complain of those matters alleged in Article XXII of this suit, for the reason that almost all of the items complained about occurred before Plaintiff became the owner of the shares, as will appear from Certificate of the Trust Officer of The National American Bank of New Orleans annexed hereto and made a part hereof. Thus, Frank Spalitta, Custodian for Gina Theresa Spalitta and Karen Elizabeth Spalitta acquired shares on November 12th, 1965 and March 7th, 1965, whereas the events compalined of occurred as follows:

Article XXII(1)	June 11, 1964.
Article XXII(2)	Contemporaneously with June 11, 1964
Article XXII(3)	
Article XXII(4)	
Article XXII(5)	and (6) filed for record on March 30, 1965.
Article XXII(7)	"February of 1965".
Article XXII(8)	

V.

The relief sought for $4,075,000.00 under Paragraph (b) of the prayer and Article XXII of the petition cannot be prosecuted at this time for the reason that claim has been made for the recovery of all of the items therein in separate proceedings and if such sums are recovered, then the same sums cannot likewise be recovered from the National American Bank.

VI.

With respect to the item of $30,000.00 in subparagraph 10 of Article XXII, WILLIAM H. LaROSE, JENNINGS L. COURVILLE, RALPH L. DUBOS, move that the suit be dismissed as to them since the petition shows that this item is now moot.

VII.

The relief sought in Paragraph (d) of the prayer for an indemnity bond to be written in favor of The National American Bank and Paragraph (g) seeking the removal of the individual defendants from office are not proper relief in a stockholder derivative suit.

WHEREFORE, Defendants, THE NATIONAL AMER-

ICAN BANK OF NEW ORLEANS, LOUIS J. ROUSSEL, CLEM H. SEHRT, WILLIAM H. LaROSE, JENNINGS L. COURVILLE, RALPH L. DUBOS, LOUIS J. ROUSSEL, III, and HARRY J. BATT, SR., pray that this motion be maintained, and the suit of Plaintiff be dismissed at Plaintiff's cost.

STEEG AND SHUSHAN

By: .....

Henry O'Connor, Jr.
550 Saratoga Building
New Orleans, La. 70112
524-5587

SEHRT, BOYLE & WHEELER

By: .....

Peter Butler
National American Bank Building
New Orleans, Louisiana 70112
524-3731
ATTORNEYS FOR DEFENDANTS

CERTIFICATE

I hereby certify that a copy of the above and foregoing Motion to Dismiss has been served on opposing Attorneys, by mailing same to their respective offices addressed as follows:

Mr. James J. Morrison
National Bank of Commerce Bldg.
New Orleans, La.
Mr. Paul C. Tate
Sixth at Chestnut
Mamou, Louisiana

New Orleans, La., November 18th, 1968.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
CIVIL ACTION NO. 68-1479
SECTION "F"

FRANK SPALITTA, AS GUARDIAN OF THE MINORS, KAREN ELIZABETH AND GINA THERESA SPALITTA,

Plaintiff

versus

NATIONAL AMERICAN BANK OF NEW ORLEANS, LOUIS J. ROUSSEL, CLEM H. SEHRT, WILLIAM H. LaROSE, JENNINGS L. COURVILLE, RALPH L. DUBOS, LOUIS J. ROUSSEL, III, HARRY J. BATT, SR.

Defendants

SUPPLEMENTAL MOTION TO DISMISS AND ALTERNATIVE MOTION FOR SUMMARY JUDGMENT

NOW COMES, NATIONAL AMERICAN BANK OF NEW ORLEANS, LOUIS J. ROUSSEL, CLEM H. SEHRT, WILLIAM H. LaROSE, JENNINGS L. COURVILLE, RALPH L. DUBOS, LOUIS J. ROUSSEL, III, and HARRY J. BATT, SR., all defendants herein, and adopting by reference as if copied herein in extenso their earlier Motion to Dismiss and Memorandum in Support of Motion to Dismiss, move this Court under Rule 12(b) F.R.C.P. to dismiss the action because the complaint fails to state a claim against defendants upon which relief can be granted, or in the alternative, to grant summary judgment for the defendants under Rule 56, F.R.C.P. on the ground that there is no genuine issue as to any ma-

terial fact as more particularly appears from the pleadings on file herein and the affidavits of Rene R. Smith, Vice President and Trust Officer of the National American Bank of New Orleans — EXHIBIT "B"; Moise S. Steeg, Jr. — EXHIBIT "B"; and Fred C. Martin, Vice President of the National American Bank of New Orleans — EXHIBIT "C"; and that the defendants are entitled to judgment as a matter of law.

WHEREFORE, Defendants, NATIONAL AMERICAN BANK OF NEW ORLEANS, LOUIS J. ROUSSEL, CLEM H. SEHRT, WILLIAM H. LaROSE, JENNINGS L. COURVILLE, RALPH L. DUBOS, LOUIS J. ROUSSEL, III, and HARRY J. BATT, SR. pray that this Motion be maintained dismissing Plaintiff's suit at his cost; or in the alternative, that Summary Judgment in favor of Defendants be granted.

SEHRT, BOYLE, WHEELER & BUTLER
Peter Butler
Attorneys at Law
National American Bank Building
New Orleans, La. 70112
STEEG AND SHUSHAN
Moise S. Steeg, Jr.
Attorneys at Law
550 Saratoga Building
New Orleans, La. 70112

By: .....
Attorneys for Defendants

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
CIVIL ACTION NO. 68-1479
SECTION "F"

FRANK SPALITTA, AS GUARDIAN OF THE MINORS, KAREN ELIZABETH AND GINA THERESA SPALITTA,

Plaintiff

versus

NATIONAL AMERICAN BANK OF NEW ORLEANS, LOUIS J. ROUSSEL, CLEM H. SEHRT, WILLIAM H. LaROSE, JENNINGS L. COURVILLE, RALPH L. DUBOS, LOUIS J. ROUSSEL, III, HARRY J. BATT, SR.

Defendants

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED

NOW COME NATIONAL AMERICAN BANK OF NEW ORLEANS, LOUIS J. ROUSSEL, CLEM H. SEHRET, WILLIAM H. LaROSE, JENNINGS L. COURVILLE, RALPH L. DUBOS, LOUIS J. ROUSSEL, III and HARRY J. BATT, SR., defendants herein, and state as follows:

The following constitute the material facts as to which the defendants contend there is no genuine issue to be tried.

I.

Gina Theresa Spalitta and Karen Elizabeth Spalitta, the minor children of plaintiff, on whose behalf plaintiff

brings this action, became shareholders of the National American Bank of New Orleans, upon their acquisition of the following described shares on the dates set forth:

GINA THERESA SPALITTA —

Certificate No. CO 1783 for 12 shares issued under date of November 12, 1965;
Certificate No. CO 2330 for 4 shares issued under date of March 7, 1966;

KAREN ELIZABETH SPALITTA —

Certificate No. CO 1785 for 13 shares issued under date of November 12, 1965;
Certificate No. CO 2173 for 4 shares issued under date of March 7, 1966;

The above described shares were issued in the name of Frank Spalitta, Custodian for Gina Theresa Spalitta under the Louisiana Uniform Gifts to Minors Act or Frank Spalitta, Custodian for Karen Elizabeth Spalitta, under the Louisiana Uniform Gifts to Minors Act. All as appears from the Affidavit of Rene R. Smith, Vice President and Trust Officer of the National American Bank of New Orleans annexed hereto as Exhibit "A".

II.

The transactions or occurrences alleged by plaintiff as constituting the basis for his suit occurred prior to the acquisition by plaintiff's minor children of their stock in the National American Bank of New Orleans on the dates shown above; specifically,

A) "Article XXII (1) 500 acres of land including 5 producing oil wells out of the Sotan Tract,

West Baton Rouge and Pointe Coupee Parishes, Louisiana, deeded to Louis J. Roussel, on *June 11, 1964*, COB 93, folio 36." The plaintiff's own allegation shows the date as being prior to his acquisition of shares.

B) "Article XXII (2) *contemporaneously with the foregoing*, Roussel demanded in cash, which he nominated Rena Taylor to receive,—$25,000.00" This occurred on or about June 8, 1964 as shown from copies of the documents evidencing said transaction attached to Exhibit "B".

C) "Article XXII (3) 5% of the gross rental income from the Audubon Building, a one-half interest in which was owned by Southern Land Title Corporation." This transaction took place or or about January 25, 1965, as shown from copies of the documents evidencing said transactions attached to Exhibit "B".

D) "Article XXII (5) The bargain sale for $25,000.00 of the Parkchester Shopping Center Oil Company Service Station." This transaction occurred on or about February 5, 1965 and was recorded in COB 665, folio 253 on March 30, 1965.

E) "Article XXII (6) The bargain sale for $25,000.00 of the Parkchester Shopping Center National American Bank Branch to Louis J. Roussel, III." This transaction occurred on or about February 5, 1965, and was recorded in COB 664, folio 241 on March 30, 1965.

F) "Article XXII (7) In conjunction with the foregoing, *in about February of 1965*, Louis J. Roussel demanded $15,000.00 cash which he nominated to be received by his son, Louis J. Roussel, III and his daughter, Mrs. Charlemagne Roussel Morrel from Southern Land Title Corporation." This transaction by plaintiff's own statement, occurred prior to his acquisition of shares.

G) "Article XXII (8) Through Republic Petroleum, a Roussel controlled corporation, on account of Monaghan mineral interests which never vested in Southern Land Title Corporation." This transaction occurred on or about December 15, 1964 as shown by copies of the documents evidencing said transaction attached to Exhibit "B".

III.

The property referred to as Tanglewood Estates has by plaintiff's own admission, been retroceded to the Trustee in Bankruptcy for Sam J. Recile by Vice-Presidents LaRose, Courville and Dubos. This matter is, therefore, moot.

Plaintiff, Frank J. Spalitta, is liable in his individual capacity as endorser or guarantor to the National American Bank of New Orleans and its correspondent banks in the amount of $5,292,149.69 as shown by the affidavit of Fred C. Martin annexed hereto as Exhibit "C".

IV.

Plaintiff was an active and consenting party to all the transactions or occurrences alleged by him as forming the basis of his Complaint.

V.

The allegations of the Plaintiff's Complaint accepted as correct for the purposes of this Motion, disclose no direct, personal injury to Plaintiff or any shareholder as would entitle the Plaintiff to bring a class action on behalf of the shareholders.

Respectfully submitted,

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By: _____

Attorneys for Defendants
MOISE S. STEEG, JR.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
CIVIL ACTION NO. 68-1479
SECTION "F"

FRANK SPALITTA, AS GUARDIAN OF THE MINORS, KAREN ELIZABETH AND GINA THERESA SPALITTA,

Plaintiff

versus

NATIONAL AMERICAN BANK OF NEW ORLEANS, ET AL

Defendants

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE EXISTS A GENUINE ISSUE TO BE TRIED

Now comes Frank Spalitta, as guardian of the minors, Karen Elizabeth and Gina Theresa Spalitta, plaintiffs herein, through undersigned counsel, and states as follows:

There is a genuine issue as to the transactions and occurances constituting the basis for plaintiff's suit in this matter.

I.

The dates set forth in Paragraph II of defendants' Statement of Material Facts are not the dates constituting the basis for this suit. The date constituting the basis for this suit is July 26, 1968, the date of Exhibit 2 and

Exhibit 3 attached to plaintiffs' complaint on which date both the President and the attorney for National American Bank, speaking for and on behalf of said Bank and its Directors, refused to take any action with respect to the complaints and demands of Frank Spalitta as custodian of the two stockholders of the Bank and as their legal representative, to protect the interest of the Bank and to recover sums of money due the Bank, all as more fully set forth in Article VI of the complaint herein, and Exhibits 1, 2 and 3 thereof. As a matter of fact, none of the incidents mentioned in Paragraph II of defendants' Statement of Material Facts refer to any transaction of National American Bank whatsoever. The affidavit of Mr. Rene R. Smith discloses that Gina Theresa and Karen Elizabeth Spalitta, the stockholders in question, acquired their stock between November 12, 1965, and March 7, 1966, long before the transaction complained of: i.e. the refusal of the President and Directors and National American Bank to protect and enforce the rights of the Bank as disclosed in the complaint and Exhibit 1 thereof.

II.

The Tanglewood Estates matter referred to in Paragraph III of defendants' Statement of Material Facts is by no means "moot". Said assets valued in excess of $30,000.00 in the complaint, for the purpose of this proceedings, were admittedly received by the *defendants* as fees or emoluments as a condition of granting, extending or rearranging loans on the collateral thereof. As such, such emoluments belong to the Bank and not to the employees. There was no prohibition against the Bank charging for such services in rearranging and processing loans and it was entitled to make such a charge, and to receive such emoluments, which the evidence will show was

for services rearranging and disbursing and applying for credit millions of dollars in loaned funds.

The only thing improper about the receipt of such emoluments was for the officers and Directors to receive same themselves and keep same as their own private personal property without turning same over to the Bank who was entitled thereto. Such officers and Directors now further deprive the Bank of such properties by turning same over to *a Trustee in Bankruptcy compounding their original wrong of having taken the compensation in the first place*. Once they received it, it belonged to the Bank *and they had no more right to turn it over to the Trustee in Bankruptcy* to the exclusion of the Bank then they had to sell or give it away to some third person to the detriment of the Bank. It is therefore most vehemently denied that there is anything "moot" about this transaction so far as the rights of National American Bank are concerned!

III.

It is denied that Frank Spalitta is indebted to National American Bank in any amount whatsoever. The affidavit of Fred C. Martin relied upon by defendants in their Motion to Dismiss is based entirely upon the indirect liability of Frank Spalitta to National American Bank assuming the legality and enforceability of his "continuing guarantee", which is denied by Frank Spalitta as shown by the affidavit attached hereto. But even assuming his liability, Frank Spalitta states in this affidavit that he cannot pay any such amount of five million dollars on his guarantee, all of which emphasizes the need for protection of the Bank by this proceedings.

The affidavit of Fred C. Martin, annexed as Exhibit C, however, is completely immaterial, as the real plaintiffs and the real parties in interest are not Frank Spalitta but Karen Elizabeth and Gina Theresa Spalitta. It is denied that Karen Elizabeth and Gina Theresa Spalitta were either active or consented to any of the transactions or occurances referred to in the complaint, or indeed they do not have the capacity to consent thereto. Nor can they, as minors, be prejudiced by any action of their father Frank Spalitta.

WHEREFORE, plaintiffs show that material facts are at issue in this proceedings and there exists a genuine issue or issues to be tried.

PAUL C. TATE AND
JAMES J. MORRISON

By

JAMES J. MORRISON
Attorney for Plaintiffs
1007 Nat'l Bank of Commerce Bldg.
New Orleans, Louisiana 70112
524-5631

MINUTE ENTRY
MITCHELL, J.
FEBRUARY 11, 1970
CIVIL ACTION NO. 68-1479
SECTION F

FRANK SPALITTA, ETC.

versus

NATIONAL AMERICAN BANK OF N.O., ETC.

This cause came on for hearing on another day.
Present:

James J. Morrison, Esq.
Attorney for plaintiffs
Moise S. Steeg, Esq.
Attorney for defendants

IT IS ORDERED that motion by defendants to dismiss is hereby granted.

Eight counts of the petition are invalid as under 28 USC 231 and La. CCP 596(1) the transactions complained of must have occurred when plaintiffs were stockholders.

The ninth court is premature as the status of the property located at 225 Baronne Street is presently in litigation in Judge Heebe's division of this Court.

Count ten is moot as the property in question has been reconveyed by request of the Court to the Trustee in Bankruptcy for Sam J. Recile.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
CIVIL ACTION NO. 68-1479
SECTION "F"

FILED Feb. 18, 1970

FRANK SPALITTA, as guardian of the minors,
KAREN ELIZABETH SPALITTA and
GINA THERESA SPALITTA

versus

NATIONAL AMERICAN BANK OF NEW ORLEANS, LOUIS J. ROUSSEL, CLEM H. SEHRT, WILLIAM H. LA ROSE, JENNINGS L. COURVILLE, RALPH L. DUBOS, LOUIS ROUSSEL, III, and HARRY J. BATT, JR.

JUDGMENT

This cause came on for hearing before the Court on the motion of the deefndants to dismiss.

After hearing the argument of counsel, the court took the matter under submission and took time to consider.

By minute entry of February 11, 1970, the Court granted the defendants motion to dismiss the complaint. Accordingly:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of the defendants, National American Bank of New Orleans, Louis J. Roussel, Clem

H. Schrt, William H. LaRose, Jennings L. Courville, Ralph L. Dubos, Louis J. Roussel, III, and Harry J. Batt, Jr., and against the plaintiff, Frank Spalitta, as guardian of the minors, Karen Elizabeth Spalitta and Gina Theresa Spalitta, dismissing said plaintiffs suit at their costs.

Dated at New Orleans, La., this 18 day of February, 1970.

(Signed) BENJAMIN W. REISCH

Benjamin W. Reisch, Clerk

APPROVED AS TO FORM:
(Signed) Lansing L. Mitchell

UNITED STATES DISTRICT JUDGE

James J. Morrison, Esq.
Paul C. Tate, Esq.
Peter J. Butler, Esq.
Moise S. Steeg, Jr., Esq.